IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 756 of 1986
With
FIRST APPEAL No. 757 of 1986
And
FIRST APPEAL No. 758 of 1986

For Approval and Signature:
HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Appellant(s)
Versus
MINOR SANGEETA V AJMERI & 4 - Defendant(s)

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Appearance :
MS MAYA DESAI for MR MD PANDYA for Appellant(s) : 1,
MR BAIJU JOSHI for MR SHIRISH JOSHI for Defendant(s) : 1 - 4.
Defendant(s) : 5 SERVED ,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 18/10/2007

COMMON ORAL JUDGMENT

These three Appeals preferred under Section 110D of the Motor Vehicles Act, 1939 arise from the common

judgment and award dated 4th September, 1985 passed by the Motor Accident Claims Tribunal, Nadiad (hereinafter referred to as, **“the Tribunal”**) in Motor Accident Claim Petitions Nos.878/1984, 647/1984 and 648/1984 respectively.

The appellant in these three Appeals is Gujarat State Road Transport Corporation (hereinafter referred to as, **“the Corporation”**), owner of the offending vehicle, a bus bearing registration no.GRR-8291. The respondents in each Appeal are the respective claimants.

The above referred three claims arose from an incidence of accident occurred between the offending bus and the scooter bearing registration no.GRE-8195 on 20th May, 1984. The victims of the accident were the rider and the pillion rider of the scooter. The accident in question occurred near the cross-section of 28 feet wide Umreth-Anand State road which runs North-South and a 14 feet wide West-East, Nadiad-Ode local road which cuts through the State road. At the time of the fateful incidence, the scooter riders

were coming on the State road from Umreth on the northern side and were proceeding to Ode on the east of the State road. The offending bus was coming on the local road from Nadiad on the western side and was proceeding to Ode to the east. When the scooter took turn on its left towards Ode and the offending bus approached the road to Ode after crossing the inter-section the accident in question occurred. The scooter was hit by the offending bus. Both the rider and the pillion rider were thrown off the scooter and sustained fatal injuries. The scooter was crushed under the rear wheel of the offending bus and was totally destroyed.

The claimants in the Claim Petition No.878/1984 were the minor children and the parents-in-law of the deceased Sudhaben, the pillion rider of the scooter. The claimants in the Claim Petition No.647/1984 were the mother and the brother of the deceased Manharbhai, the driver of the scooter. The claimants in the Claim Petition No.648/1984 was the brother of the deceased Manharbhai, the owner of the scooter.

The claimants in the Claim Petition No.878/1984 clamed that the deceased Sudhaben was 27 years of age; she was employed by the State Government as Police Constable and was receiving a monthly salary of Rs.750=00. Her husband had passed away 7 years ago. She was the only bread-earner in the family and all the four claimants were dependent on her. They claimed a compensation in the sum of Rs.2 lakhs.

The claimants in the Claim Petition No.647/1984 were the mother and the brother of the deceased Manharbhai, the driver of the scooter. According to the said claimants, the deceased Manharbhai was 25 years of age; he was serving in the Baroda Municipal Corporation as a Driver on a monthly salary of Rs.500=00 and had a potential to earn more. Had he lived longer, he would have certainly earned more than what was his earning at the relevant time. He also had a part-time job in one Raju Automobiles from where he was earning Rs.500=00 to Rs.600=00 a month. They lodged a claim for compensation in the sum of Rs.1 lakh.

The claimant in the Claim Petition No.648/1984 was the brother of the deceased Manharbhai. He claimed that he was the owner of the scooter bearing registration no.GRE-8195 which was destroyed in the accident in question. He lodged a claim for compensation in the sum of Rs.9,999=00.

The Tribunal, after considering the evidence on record, held that the accident in question occurred on account of rash and negligent driving of the offending bus by its driver and that he was solely responsible for the accident. Considering the age, occupation and earning capacity of the deceased Sudhaben, the Tribunal awarded compensation in the sum of Rs.1,13,000=00 to the claimants in Claim Petition No.878/1984.

In Claim Petition No.647/1984, the Tribunal took into consideration the age of the deceased and his earning as the employee of the Municipal Corporation. The Tribunal also took into consideration the impending marriage of the deceased Manharbhai to hold that after his marriage he would not have contributed

more than 1/3rd for the maintenance of his mother. Accordingly, the mother of the deceased Manharbhai was awarded compensation in the sum of Rs.41,000=00. The claim for compensation by his brother Pravinchandra was rejected. According to the Tribunal, the said Pravinchandra was not the dependent of the deceased Manharbhai.

In the Claim Petition No.648/1984, the claim of the claimant, the aforesaid Pravinchandra, was accepted. He was awarded compensation in the sum of Rs.9,999=00, the loss sustained by him for the damage to the scooter.

Feeling aggrieved, the Corporation has preferred the present Appeals. Ms.Desai has submitted that the Tribunal has erred in holding that for the accident in question the rash and negligent driving of the bus was solely responsible. She has relied upon the panchnama (Exh.14), the evidence of the bus driver Huseinmiya Umedmiya (Exh.37), the evidence of the eye-witnesses Pravinbhai Kalidas (Exh.28) and Yogeshkumar Udesing (Exh.35). She has submitted that

considering the nature of damage caused to the bus and the scooter, it is apparent that the accident in question occurred at the cross-section of the State road and the local road after the bus had crossed the inter-section and was about to enter the road towards Ode. It is evident that at that time the scooter came from the left of the bus from northern side and while negotiating a turn towards Ode, struck the bus on the left side near the second window. Thus, the bus was damaged on the left side below the second window while the front of the scooter was destroyed. Thus, the bus, having entered the cross-section first, it was the duty of the scooterist to allow the bus to pass first and then to negotiate the turning. Evidently, the scooter was driven at a high speed, the driver did not wait for the bus to negotiate the cross-section and was not careful. The nature and extent of damage caused to the scooter prove the rash and negligent driving of the scooter. She has submitted that the bus driver may not be wholly exonerated but the scooter driver was equally rash and negligent. The compensation awarded to the claimants should, therefore, be reduced to the extent

the negligence contributed by the scooter driver. She has also challenged the amount of compensation awarded to the claimants in each petition. However, her main emphasis is on the point of contributory negligence.

The Appeals are contested by Mr.Joshi. He has submitted that admittedly the scooter driver was coming on the State road from the northern side and had turned left on the local road towards Ode. The question of scooter hitting the bus or colliding with the bus while it was crossing the cross-section would not arise. The only possibility was that after the scooter had taken left turn towards Ode, the bus which had come across the cross-section hit the scooter, as a result the scooter fell down, the scooter rider and the pillion rider were thrown off the scooter on the road and the scooter was destroyed under the rear wheel of the bus. The bus also was damaged on its left side under the second window where it had hit the scooter.

As to the quantum of compensation, he has

submitted that considering the age of the deceased and the earning capacity, the possible increase in the earnings and the loss of expectancy of life, the compensation awarded to the claimants in each petition is just and proper.

I have perused the panchnama, the evidence of the bus driver Huseinmiya Umedmiya (Exh.37), the evidence of the eye-witnesses Pravinbhai Kalidas (Exh.28) and Yogeshkumar Udesing (Exh.35).

As to the location of the accident, there seems to be some dispute. Whether the accident had occurred at the cross-section or on the local road towards Ode.

As recorded hereinabove, the bus was plying on the Nadiad-Ode local road. To proceed towards Ode, it had to negotiate the cross-section between the State road and the local road. Whereas, the scooter which was coming on the State road from the north to proceed towards Ode had to take left turn. In other words, the scooter was not required to enter the

cross-section of the roads. The proposition that the scooter entered the cross-section after the bus had almost negotiated the cross-section and hit the bus while taking left turn does not appear to be a plausible answer. It has come on record that the accident took place on the local road towards Ode and not right at the cross-section. Thus, it is evident that the accident occurred after the scooter had turned to left towards Ode. The only possibility in that case would be that the bus hit the scooter. In the process, the bus was damaged on the left side under the second window of the bus and the rider and the pillion rider of the scooter were thrown off the scooter causing fatal injuries to them. In my view, therefore, the Tribunal was right in holding that it was the offending bus which was solely responsible for the accident in question. The submission that the compensation awarded to the claimants be reduced to the extent of contributory negligence attributable to the scooter driver is, therefore, rejected.

The amount of compensation awarded to the claimants in each claim petition and the distribution

amongst the claimants in Claim Petition No.878/1984 do not warrant interference. Both the victims were young and were in public service. Both had a long service ahead and would have certainly earned more than what was their earning at the relevant time.

For the aforesaid reasons, the Appeals are dismissed with cost. Registry will maintain copy of this judgment in each Appeal.

(Ms. R.M.Doshit, J.)

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